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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA;

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

**WALKER RIVER IRRIGATION
DISTRICT, et al.,**

Defendants.

Case No. 3:73-cv-00127-MMD-WGC

**ANSWER OF CALIFORNIA STATE
AGENCIES TO AMENDED
COUNTERCLAIM OF THE UNITED
STATES OF AMERICA FOR WATER
RIGHTS ASSERTED ON BEHALF OF
THE WALKER RIVER PAIUTE
INDIAN TRIBE**

Counter-defendants California State Water Resources Control Board, California
Department of Fish and Wildlife, and California Department of Parks and Recreation (California
State Agencies), in compliance with the Stipulated Scheduling Order and Discovery Plan dated
March 7, 2019, (ECF No. 2437), hereby answer the Amended Counterclaim of the United States
of America for Water Rights Asserted on Behalf of the Walker River Paiute Indian Tribe filed
herein on May 3, 2019, (Amended Counterclaim) as follows:

1 1. Answering paragraph 1, California State Agencies lack knowledge or information
2 sufficient to form a belief about the truth of the allegations.

3 2. Answering paragraph 2, admit paragraph XIV of the Final Decree states “The Court
4 retains jurisdiction of this cause for the purpose of changing the duty of water or for correcting or
5 modifying this decree; also for regulatory purposes, including a change of the place of use of any
6 water user” California State Agencies deny this Court has jurisdiction to the extent any claim
7 in the Amended Counterclaim raises a controversy between the State of California and the State of
8 Nevada over apportionment of the interstate waters of the Walker River basin. Except as so
9 admitted and denied, California State Agencies lack knowledge or information sufficient to form a
10 belief about the truth of the allegations.

11 3. Answering paragraph 3, California State Agencies lack knowledge or information
12 sufficient to form a belief about the truth of the allegations.

13 4. Answering paragraph 4, California State Agencies lack knowledge or information
14 sufficient to form a belief about the truth of the allegations.

15 5. Answering paragraph 5, California State Agencies admit the Decree states the
16 United States of America is “adjudged and decreed to be the owner of the right to divert a
17 continuous flow of 26.25 cubic feet per second of the natural flow of the Walker River to be
18 diverted from said stream upon or above the Walker River Indian Reservation during the
19 irrigation season of 180 days of each year for the irrigation of 2100 acres of land situated in the
20 Walker River Indian Reservation, . . . with a priority of November 29, 1859.” Except as so
21 admitted, California State Agencies lack knowledge or information sufficient to form a belief
22 about the truth of the allegations.

23 6. Answering paragraph 6, California State Agencies admit that in 1924, the United
24 States filed suit in the District of Nevada to establish water rights for the Reservation. Except as
25 so admitted, California State Agencies lack knowledge or information sufficient to form a belief
26 about the truth of the allegations.

27 7. Answering the first sentence of paragraph 7, California State Agencies admit the
28 Order for Entry of Amended Final Decree to Conform to Writ of Mandate Etc. states “IT IS

1 FURTHER ORDERED that the Decree of this Court entered on April 15, 1936, be further
2 amended by inserting the words ‘as of the 14th day of April, 1936’ after the last two words ‘its
3 tributaries’ appearing on line 3, page 72 thereof” Answering the second sentence of
4 paragraph 7, California State Agencies admit paragraph XIV of the Decree states “The Court
5 retains jurisdiction of this cause for the purpose of changing the duty of water or for correcting or
6 modifying this decree; also for regulatory purposes, including a change of the place of use of any
7 water user” Except as so admitted, California State Agencies lack knowledge or information
8 sufficient to form a belief about the truth of the allegations.

9 8. Answering paragraph 8, California State Agencies lack knowledge or information
10 sufficient to form a belief about the truth of the allegations.

11 9. Answering paragraph 9, California State Agencies incorporate by reference their
12 responses to paragraphs 1 through 8.

13 10. Answering paragraph 10, California State Agencies lack knowledge or information
14 sufficient to form a belief about the truth of the allegations.

15 11. Answering paragraph 11, California State Agencies lack knowledge or information
16 sufficient to form a belief about the truth of the allegations.

17 12. Answering paragraph 12, California State Agencies lack knowledge or information
18 sufficient to form a belief about the truth of the allegations.

19 13. Answering paragraph 13, California State Agencies incorporate by reference their
20 responses to paragraphs 1 through 12.

21 14. Answering paragraph 14, California State Agencies lack knowledge or information
22 sufficient to form a belief about the truth of the allegations.

23 15. Answering paragraph 15, California State Agencies lack knowledge or information
24 sufficient to form a belief about the truth of the allegations.

25 16. Answering paragraph 16, California State Agencies lack knowledge or information
26 sufficient to form a belief about the truth of the allegations.

27 17. Answering paragraph 17, California State Agencies incorporate by reference their
28 responses to paragraphs 1 through 16.

1 18. Answering paragraph 18, California State Agencies lack knowledge or information
2 sufficient to form a belief about the truth of the allegations.

3 19. Answering paragraph 19, California State Agencies lack knowledge or information
4 sufficient to form a belief about the truth of the allegations.

5 20. Answering paragraph 20, California State Agencies lack knowledge or information
6 sufficient to form a belief about the truth of the allegations.

7 **AFFIRMATIVE DEFENSES**

8 **First Affirmative Defense**

9 The doctrine of res judicata, claim preclusion, issue preclusion, and/or other principles of
10 finality bar the re-adjudication of water rights adjudicated in the Walker River Decree.

11 **Second Affirmative Defense**

12 The Amended Counterclaim fails to join necessary and indispensable parties.

13 **Third Affirmative Defense**

14 The Amended Counterclaim and every claim for relief stated therein is barred by the
15 doctrine of laches.

16 **Fourth Affirmative Defense**

17 The Amended Counterclaim and every claim for relief stated therein is barred by the
18 doctrine of estoppel.

19 **Fifth Affirmative Defense**

20 The Amended Counterclaim and every claim for relief stated therein has been waived.

21 WHEREFORE, California State Agencies pray for judgment as follows:

22 1. That the United States of America, on its own behalf or for the benefit of the
23 Walker River Paiute Tribe and its members, is entitled to no relief to the extent such relief would:
24 (a) reduce or interfere with any water rights held by California State Agencies, (b) interfere with
25 California State Agencies' jurisdiction and/or regulatory authority, (c) adversely impact
26 California's public trust resources or result in the waste or unreasonable use of California's water
27 resources, (d) conflict with water rights that were fully adjudicated in the Walker River Decree,
28 and (e) conflict with California law;

2. For their costs of suit; and

3. For such other and further relief as the Court deems just and proper.

Dated: August 1, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California

/s/ Nhu Q. Nguyen

NHU Q. NGUYEN
Deputy Attorney General
Attorneys for California State Agencies

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DECLARATION OF SERVICE BY CM/ECF

Case Name: *United States of America; Walker River Paiute Tribe v. Walker River Irrigation District*

Case No. **3:73-cv-00127-MMD-WGC**

Pursuant to Federal Rule of Civil Procedure, rule 5(b), I certify that on this date I caused the foregoing document, entitled **ANSWER OF CALIFORNIA STATE AGENCIES TO AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA FOR WATER RIGHTS ASSERTED ON BEHALF OF THE WALKER RIVER PAIUTE INDIAN TRIBE**, to be filed electronically with the Clerk of the Court using the CM/ECF system.

This filing is only being served via CM/ECF and is not subject to the postcard notice requirement provided for in Paragraph 17.c of the October 17, 2014 Superseding Order Regarding Service (Document No. 2100) and pursuant to Federal Rule of Civil Procedure, rule 5(a)(1)(E) and (b)(3), and Local Rule 5-4.

Dated: August 1, 2019

/s/ Leticia Aguirre
Leticia Aguirre